IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4926/2006

Shyam Lal Sharma
Vs.
State of Rajasthan and Others.

Date of Order : 15/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. V.S.Choudhary for the petitioner.
Mr. Rameshwar Dave, Deputy Government Advocate for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks to declare Rule 10 of the Rajasthan State Agriculture Market Board Service (Pension) Rules, 1995 as ultra vires to the Constitution of India and to modify the order Annex.4 dated 14.12.2004 and Annex.5 dated 25.1.2005 granting retiral benefits to the petitioner including pension and gratuity by counting the entire period of service rendered by the petitioner from the date of his initial appointment w.e.f. 1.9.1968 till retirement as qualifying service for grant of all the retiral benefits.

Learned counsel for the petitioner submits that the controversy involved in the instant case stands concluded by the

decisions of this Court in Adhik Lal Choudhary Vs. State of Rajasthan and Ors., S.B.Civil Writ Petition No.3552/01 decided on 06.7.2004 by the Jaipur Bench of this Court and Rajendra Nath Sharma and Anr. Vs. State of Rajasthan and Ors. S.B.Civil Writ Petition No.1288/03, Ram Pratap Vs. State of Rajasthan and Ors. S.B.Civil Writ Petition No.1719/01 decided on 15.2.2005 as also the decision of Division Bench of this Court in State of Rajasthan and Anr. Vs. Ram Pratap and Anr. D.B.Civil Special Appeal No. 243/05 decided on 14.7.2005 whereby the decision in Ram Pratap Vs. State of Rajasthan and Ors. (supra) has been affirmed by the Division Bench.

Learned Deputy Government Advocate appearing for the respondents has not controverted the proposition and submits that the controversy stands concluded by the decisions cited by the learned counsel for the petitioner.

In Adhik Lal Choudhary Vs. State of Rajasthan and Ors. (supra) this Court held that sub-rule (2) of Rule 10 of the 1995 Rules shall stand quashed and set aside being violative of Article 14 and 16 of the Constitution of India and the respondents therein were directed to compute the qualifying service of the petitioner therein from 1965 to May 31,1997 treating the salary of petitioner in the pay scale of 6500-10000 and to pay the difference of pension.

In Rajendra Nath Sharma and Anr. Vs. State of

Rajasthan & Ors., and Ram Pratap Vs. State of Rajasthan and Ors. (supra) this Court while allowing the writ petition filed by the petitioners therein held that the petitioners therein are entitled to get the benefit for the purpose of pension and gratuity while counting their services from the date of initial appointment.

In State of Rajasthan and Anr. Vs. Ram Pratap and Anr. (supra), the Division Bench of this Court held that even a temporary employee is entitled to get pension.

In this view of the matter, the writ petition is allowed in terms of the decisions of this Court in Adhik Lal Choudhary, Rajendra Prasad and Ram Pratap (supra). Since sub-rule (2) of Rule 10 of the Rules of 1995 has already been struck off by this Court and affirmed by the Division Bench, therefore, the petitioner is entitled for pension and gratuity from the date of his initial appointment i.e. 1.9.1968 and in consequence thereof the respondents are directed to modify the orders Annex.4 dated 14.12.2004 and Annex.5 dated 25.1.2005 by computing the qualifying service of the petitioner from the date of his initial appointment. No order as to costs.

(H.R.PANWAR),J.

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